BRIEF IN SUPPORT OF PETITION.

Opinions of Subordinate Court.

The first opinion of any Court of Record was delivered by The Court of Quarter Sessions of the Peace of Delaware County, Pennsylvania. It was written by President Judge A. D. MacDade and was filed on August 18, 1943. It appears on pages 85-110 of the Record and is not reported.

The Opinion of the Superior Court of Pennsylvania (Keller, P. J., Baldrige, Stadtfeld, Rhodes, Hirt and Kenworthey, J. J.—Rhodes, J., writing) was filed on January 27, 1944, and appears at pages 156, 158 of the Record. It is reported in 154 Pa. Super. Ct. 112, and in 35 Atlantic Reporter 2nd Series 742.

The Opinion of the Supreme Court of Pennsylvania was filed on March 22, 1944, and appears at page 164 of the Record. At the time of the preparation of this Brief it has not been reported.

Jurisdiction.

The Supreme Court of the United States has jurisdiction by virtue of the provisions of *Revised Statutes Section 690, 709*, as last amended by the *Act of February 13, 1925, C. 229, Section 1, 43 Statute 937* (28 U. S. C. A. Section 344), which provides:

> "* * * It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause * * * where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution * * * of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution * * *

> of * * * the United States; and the Power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied * * *."

The Facts.

A concise statement of the facts in this case has hereinbefore been set forth in the Petition for Certiorari to which incorporation by reference is hereby made, and will not, therefore, be repeated here.

ARGUMENT.

I. Power to Re-Examine Recent Decision.

It was recently said in the case of *Smith* v. *Allwright*, 64 Supreme Court 757:

> "* * * We are not unmindful of the desirability of continuity of decisions in constitutional questions. However, when convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon an amendment and upon legislative action, this Court, throughout its history, has freely exercised its power to re-examine the basis of its constitutional decisions. This has long been the accepted practice, and this practice has continued to this day. This is particularly true when the decision believed erroneous is the application of a constitutional principle rather than an interpretation of the Constitution to extract the principle itself."

It is, therefore, respectfully submitted that although Your Honorable Court has recently decided this self-same question in the case of *West Virginia State Board of Education, et al.* v. *Barnett, et al.*, 319 U. S. 624, 63 S. Ct. 1178, there is in that case such error that the principles of law

there announced ought to be re-examined so that the prior contrary decisions be again made the law of the land.

II. Contrary Decisions.

(a) Decisions holding the Constitutional claim to be unmeritorious:

Leoles v. *Landers*, 302 U. S. 656;
Hering v. *State Board of Education*, 303 U. S. 624;
Gabirelli v. *Nickerbocker*, 306 U. S. 621;
Johnson v. *Deerfield*, 306 U. S. 621;
Minersville School District v. *Gobitis*, 310 U. S. 586.

(b) Decision sustaining the Constitutional Claim:
West Virginia State Board of Education v. *Walter Barnett*, 63 Supreme Court 1178.

III. Conclusion.

No more forceful arguments could be used by the Commonwealth of Pennsylvania than those which were set forth in the majority opinion of *Minersville School District* v. *Gobitis*, 310 U. S. 586, and in the dissenting opinion of *West Virginia State Board of Education* v. *Barnett*, 319 U. S. 624.

To attempt to change the forceful language in those opinions or to attempt to amplify the reasons therein set forth would be to assume knowledge that has already been exhaustively announced and discussed.

This case is of such moment that the sovereign State of Pennsylvania has seen fit to apply to Your Honorable Court to reinstate its long established rule which required all in attendance at public schools to salute the National Flag where the Flag salute was part of the school ceremony.

The questions which this application suggests should be definitely settled by this Court. They involve the rights,

duties and obligations of all of the school children in this Country.

All of which is respectfully submitted.

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